

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
)  
)  
Plaintiff,  
)  
)  
vs.  
)  
GUADALUPE ROJAS-GUZMAN,  
)  
Defendant.  
)

3:11-cr-00088-RCJ-VPC

## ORDER

Defendant Guadalupe Rojas-Guzman pled guilty to one count of Unlawful Reentry by a Deported, Removed, or Excluded Alien, 8 U.S.C. 1326(a), and the Court sentenced him to 240 months imprisonment. (*See* Am. J. 1–2, ECF No. 35). The Court simultaneously sentenced Defendant to 264 months imprisonment for a separate offense charged in Case No. 3:10-cr-109. Defendant appealed both convictions and sentences. The Court of Appeals affirmed in both cases, noting that Defendant had not raised any claims of error as to the conviction for unlawful reentry and had therefore waived any claims in this case. (*See* Mem. Op. 2 n. 1, June 19, 2013, ECF No. 38). The mandate issued on July 12, 2013. (*See* Mandate, ECF No. 39). Defendant filed a habeas corpus motion in this Court pursuant to 28 U.S.C. § 2255, asking the Court to vacate, set aside, or correct his sentence. The Court denied the motion on October 15, 2014. (*See* Order, ECF No. 42).

Defendant has now filed a successive § 2255 motion. Although Defendant has not styled his motion as a § 2255 motion, he is “claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . [and] is otherwise subject to collateral attack.” 28 U.S.C. § 2255. Specifically, he asks the Court to dismiss the indictment that led to his conviction based on 8 U.S.C. § 1326 and the Due Process Clause. He also seeks dismissal through collateral attack. “[A] disguised second or successive § 2255 motion . . . must meet the criteria set forth in § 2255(h).” *United States v. Washington*, 653 F.3d 1057, 1059-60 (9th Cir. 2011). Under § 2255(h), a prisoner must petition the Court of Appeals for permission to file a successive motion, which Defendant has not done. The Court denies the motion.

## CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 43) is DENIED.

IT IS FURTHER ORDERED that the Motion to Suppress Removal Order (ECF No. 45) is DENIED.

IT IS SO ORDERED.

Dated this 29<sup>th</sup> day of June, 2016.

ROBERT C. JONES  
United States District Judge